

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
February 5, 2003

ITEM: 8

SUBJECT: Rescission of Cease and Desist Order No. 98-25, Color Spot Foliage, Inc., Color Spot Fallbrook Nursery, San Diego County (tentative Order No. R9-2003-0036) (*Eric Becker*)

PURPOSE: To rescind Cease and Desist Order No. 98-25 for Color Spot Fallbrook Nursery, San Diego County.

PUBLIC NOTICE: The Regional Board Agenda Notice was mailed on January 17, 2003 and has been posted on the Regional Board web page. This notification satisfies the requirements pursuant to State Government Code Section 11125 for a 10-day notice.

DISCUSSION: On April 8, 1998, the Regional Board issued Cease and Desist Order No. 98-25 (CDO) to Color Spot Foliage Inc. located at 258 Elm Tree Lane, Fallbrook, San Diego County, in the San Luis Rey Hydrographic Unit. The CDO was issued because Color Spot was discharging irrigation runoff to the adjacent creek in violation of a Regional Board Order prohibiting the discharge (Order No. 86-32). The CDO included the time schedule proposed by Color Spot for the completion of the facilities necessary to terminate the discharge. The CDO final deadline for the project was September 1999.

Color Spot failed to comply with the milestones specified in the CDO and in October 2000 requested a revision to the time schedule to establish March 15, 2001 as the new final deadline. Staff did not concur with this request but advised Color Spot the timeliness of their subsequent actions would be considered if further Regional Board enforcement action was necessary.

In September 2000, Color Spot retained URS, Inc. to design and manage construction of the project. The plan developed

by URS included irrigation controls, best management practices, and an irrigation drainage design consisting of a French drain system to capture irrigation runoff, collection sumps and a treatment system for reuse.

By letter dated June 28, 2002, Foley & Lardner, Attorneys at Law representing Color Spot notified the Regional Board that the facilities identified in the URS plan were completed and requested rescission of the CDO. Staff has inspected the site to confirm that discharge of waste, which was subject to Cease and Desist Order No. 98-25, had been terminated.

Tentative Order No. 2003-0036 would, if adopted, rescind Cease and Desist Order No. 98-25. Although Color Spot failed to comply with the deadline specified in the CDO, we are not recommending imposition of administrative civil liabilities because the complexity of the project was greater than expected and that Color Spot made reasonable progress in addressing the problem since September 2000.

LEGAL CONCERNS:

None

SUPPORTING
DOCUMENTS:

1. Regional Board Tentative Order No. 2003-0036
2. Letter from Foley & Lardner requesting rescission of Cease and Desist Order No. 98-25
3. Cease and Desist Order No. 98-25.
4. Location Map

COMPLIANCE
RECORD:

Concurrently with the problems of illicit discharges of runoff to the creek, Colorspot has been in violation of State and Federal regulations for unpermitted modifications to the creek including the construction of holding ponds. These violations were not a subject of Cease and Desist Order No. 98-25, but Color Spot has been working with the State and Federal agencies to address the issue. Staff is reviewing their current proposal to restore the creek to its natural conditions and will specify requirements for the project as part of the 401 certification.

RECOMMENDATION: Adoption of Tentative Order No. 2003-0036, An Order Rescinding Cease and Desist Order No. 98-25, is recommended.